IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7965 of 2004
with
Special Civil Application No. 7968 of 2004
with
Special Civil Application No. 7971 of 2004
with
Special Civil Application No. 7974 of 2004
with
Special Civil Application No. 7975 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAMVADA SEVA SAHKARI MANDALI LIMITED & Others.

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 7965 of 2004
MR HARIN P RAVAL for Petitioners.
Mr. Kamal B. Trivedi, Addl. Advocate General
for Respondent No. 1-4,7-8
DS AFF.NOT FILED (N) for Respondent No. 5
MR SN THAKKAR for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/09/2004

ORAL COMMON JUDGEMENT

Draft amendment is allowed in all the matters.

2. Rule. Due to paucity of time, a detailed and reasoned judgment could not be delivered, however with a view to pronounce the operative part of the judgment, by a separate order dated 10th September 2004 the operative portion of the judgment was pronounced and all the aforesaid Special Civil Applications came to be dismissed. The detailed reasons for dismissing the aforesaid Special Civil Applications in the following factual scenario are as under.

3. In Special Civil Application No. 7965 of 2004, the petitioner-Society has challenged the legality and validity of the judgment and order dated 26.8.2004 passed by Additional Registrar (Appeals), Cooperative Societies, State of Gujarat, Gandhinagar in Appeal No. 89/2004 in dismissing the appeal preferred by the petitioner-Society and confirming the order passed by the District Registrar, Patan, dated 21.6.2004 in superseding Managing Committee of the Society and appointing Mehsana District Central Cooperative Bank Ltd., as Administrator of the Society.

3.1. In Special Civil Application No. 7968 of 2004, the petitioner Shri Meloj Seva Sahkari Mandali Limited has challenged the legality and validity of the order passed by the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat, Gandhinagar dated 26th August 2004 in Appeal No. 98 of 2004 in dismissing the said appeal and confirming the order passed by the District Registrar, Cooperative Societies, Patan dated 28.6.2004 in superseding Managing Committee of the society and appointing Mehsana District Central Cooperative Bank Ltd., as Administrator of the petitioner society.

3.2. In Special Civil Application No. 7971 of 2004, the petitioner, Shri Dashavada Juth Gopalak Vividh Karyakari Sahkari Mandali Limited has challenged the legality and validity of the judgment and order dated 26th August 2004 passed by the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat, Gandhinagar in Appeal No. 91 of 2004 in dismissing the same and confirming the order passed by the District

Registrar, Cooperative Societies, Patan dated 28.6.2004 in superseding the Managing Committee of the petitioner-society and appointing Mehsana District Central Cooperative Bank Ltd., as Administrator of the petitioner society.

3.3. In Special Civil Application No. 7974 of 2004, the petitioner, Shri Nedra Seva Sahkari Mandali Ltd., has challenged the legality and validity of the judgment and order dated 28.6.2004 passed by the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat, Gandhinagar, in Appeal No. 118 of 2004 in dismissing the same and confirming the order passed by the District Registrar, Cooperative Societies, Patan, dated 28.6.2004 in superseding the Managing Committee of the Society and appointing Mehsana District Central Cooperative Bank Ltd., as Administrator of the said Society.

3.4. In Special Civil Application No. 7975 of 2004,, the petitioner, Shri Kholvada Seva Sahkari Mandali Ltd., has challenged the legality and validity of the judgment and order dated 26.8.2004 passed by the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat, Gandhinagar, in Appeal No. 101 of 2004 in dismissing the same and confirming the order passed by the District Registrar, Cooperative Societies, Patan, dated 29th June 2004 in superseding the Managing Committee of the Society and appointing Mehsana District Central Cooperative Bank Ltd., as Administrator of the said Society.

4. It appears from the record, that all the petitioners had initially preferred the aforesaid Special Civil Applications challenging the orders passed by the District Registrar, Cooperative Societies, Patan in superseding the Managing Committee of the Society and appointing the Administrator and also the order passed by the Appellate Authority/Revisional Authority in not granting the interim relief during the pendency and final disposal of the appeal, and this Court by order dated 9.7.2004 issued notices in all the aforesaid Special Civil Applications and other cognate matters, and by way of ad-interim relief the operation of the order superseding the elected body of the society came to be stayed on condition that the office bearers of the society shall continue to look after day to day activities of the society and shall not spend any amount exceeding Rs. 2,500/- without prior permission of the District Registrar and shall not take any policy decision. This Court also passed an order that pendency of the petition shall not preclude the appellate

authority to proceed with the appeal or shall not preclude the petitioner from prosecuting the remedy of appeal. Under the circumstances, during the pendency of the present Special Civil Applications, the Appellate Authority vide judgment and order dated 26.8.2004 dismissed all the appeals and therefore by way of amendment the legality and validity of the judgment and order passed by the appellate authority, i.e., Additional Registrar (Cooperative Societies), State of Gujarat, are also challenged.

4.1. As in all the present Special Civil Applications, a common question of law arises, all these five Special Civil Applications are being disposed of by this common judgment and order.

5. All these petitioner societies are Agricultural Credit Dispensing Societies and their main object and activity is to give credit to new agriculturists.

6. So far as Special Civil Application No. 7965 of 2004 is concerned, a show cause notice came to be issued by the District Registrar, Cooperative Societies, Patan, dated 26.5.2004, calling upon the petitioner to show cause why the proceedings under Section 81(1)(a) should not be initiated and Administrator should not be appointed by superseding the Managing Committee of the Society and alleging inter alia;

(i) that as on 31st March 2004 the total amount to be recovered is Rs. 12,83,401 out of which Rs. 4,33,787 is the loan which is Overdue Advance and thus the total advance due to be recovered is more than 90% and though time and again the instructions are issued in the original memo under Section 106(1) of the Gujarat Cooperative Societies Act, 1961, [hereinafter referred to as "the Act" for short] to recover the overdue advance no proceedings are initiated and thus there is a financial loss caused to the society.

(ii) The Society has in the year 2002-2003 wrongly shown Rs. 1,36,310 towards income from interest in the balance sheet, despite the fact that there was no income from interest and in fact the society has incurred loss of Rs. 66,123 and the said fact has been concealed in the Balance Sheet and thereby the society has violated the provisons of Section 66 of the said Act.

(iii) For the year ended 31st March 2003 the society has incurred a cumulative loss of Rs.24,783.91 ps. and though it was directed by the Auditor in Para No.10 not

to appropriate "profit" the society in its Annual General Meeting held on 29th June 2003 wrongly appropriated the profit which is against the provisions of Section 66 of the Act.

(iv) The Society has not acted as per the instructions/directions given by the Audit Memo and thus violated the provisions of the said Act.

It was contended on behalf of the petitioner society that the petitioner society has tried to recover the amount from the members by consensus and only 23% of the amount is due and payable towards the loan. It was also further submitted on behalf of the petitioner that it is true that Rs. 4,33,787/= is outstanding as overdue advance. However by 31st May 2004 they have been able to recover Rs. 1,49,294/=. Thus they are trying their best to recover the amount. It was further contended on behalf of the petitioner society that after instructions/directions by the Auditor there is a change in the accounting system. So far as allotment of profit is concerned it was submitted that the said decision was taken by the General Body and therefore the Managing Committee should not be punished and there is no illegality committed by the society.

6.1. After giving an opportunity to the society and considering the reply submitted by the petitioner society, the District Registrar passed an order of superseding the Managing Committee and appointed the Mehsana District Central Cooperative Bank Ltd., as Administrator of the said society by holding that the society has failed in its duty to recover advances as provided in Section 106 of the Act, and that there is a violation of Section 66 of the Act by not complying with the directions issued by the Auditor in his Audit Memo/Audit Para and that the society has failed to perform its duty as cast upon it by the Act.

6.2. Being aggrieved and dissatisfied with the said order, the petitioner society had preferred the appeal before the Additional Registrar (Appeals), which also came to be dismissed and the said orders are under challenge in the present Special Civil Application.

7. So far as Special Civil Application No. 7968 of 2004 is concerned, a show cause notice came to be issued upon thet petitioner society by the District Registrar, Cooperative Societies, Patan, dated 29.5.2004 and the petitioner society was called upon to show cause why proceedings under Section 81(1)(a) should not be

initiated and the Managing Committee of the Society should not be superseded and the Administrator should not be appointed alleging inter alia;

(i) As against the total members of the Society to the tune of 385, only 5 members (out of which two are Members of the Managing Committee) were given advances totalling to the tune of Rs. 50,000/= during the year 2003-2004 and similar benefit has not been extended to other members.

(ii) No efforts were being made by the society to get loan from the funding agency for the purpose of extending advances, i.e., agricultural credit to its members.

(iii) Net profit to the tune of Rs. 21,968.95 ps for the year ended 31st March 2003 was not made available for appropriation though the same was required to be done within 3 months on or before 30th June 2003.

(iv) Total net profit brought forward for the year ended 31st March 2004 to the tune of Rs. 30,096.50 ps. came to be appropriated only on 20th June 2004 by carrying 1/4th thereof to reserve fund.

(v) The proposal for amending the bye-law No.34 for increasing the number of members of the committee to 11 though stated to have been forwarded in the year 1999, the Managing Committee has not taken any steps for following-up the same. Thus failed in its duty which is discernible from Audit Paras 2 and 3 of the Audit Memo for the year 2003-2004.

The society replied to the said show cause notice. It is submitted on behalf of the petitioner-society that the advances are given after obtaining necessary applications and getting it sanctioned by the Mehsana District Central Cooperative Bank Ltd., and after getting the sanction from the said Financing Agency 5 Members are given the advances to the extent of Rs. 50,000/= (out of the limit of Rs. 10,000/=) which is as per the bye-laws and out of 5, only 2 members are the Members of the Managing Committee. It was also further submitted that in the year 2004-2005 as on 3.5.2004 the advances are given to the members. It was further submitted on behalf of the petitioner society that for accounting bye-laws they have already sent a proposal to the Taluka Development Officer, Taluka-Panchayat, Sidhpur. However, still new proposal will be sent to the Taluka Development Officer, Taluka-Panchayat, Sidhpur. The budget is approved in the

meeting of the General Board held on 20th June 2004.

7.1. After considering the submission made on behalf of the petitioner-society and the reply the District Registrar has held that out of 385 members only 5 members are given the advances, out of these 2 members are the members of the Managing Committee. Thus, the majority of the members are not given the benefit of the advances and the society has remained negligent in performance of its duties cast on it by the said Act which has in turn prejudicially affected the interests of the members of the society and that no efforts were made to amend the bye-laws since last 5 years, and no further steps were taken after the 1st proposal was made to see that the bye-laws are amended. Thus, there is a breach of Section 66 of the Act and directions issued by the Auditor in his Audit Memo for the year 2002-2003 and 2003-2004 are not complied with.

7.2. It was also further held by the District Registrar that the allotment of the profit as on 31st March 2004 is done only on 21st June 2004 after the show cause notice and ultimately the District Registrar passed an order of superseding the petitioner-society and appointing the Mehsana District Central Cooperative Bank Ltd, Mehsana as Administrator which came to be challenged before the appellate authority and dismissed, which is the subject matter of the Special Civil Application.

8. So far as Special Civil Application No. 7971 of 2004 is concerned a shwo cause notice came to be issued on 26.5.2004 and the petitioner-society was directed to show cause why the proceedings under Section 81 of the Act should not be initiated and the Managing Committee of the Society should not be superseded and the Administrator should not be appointed by alleging inter alia that;

(i) Inspite of the directions issued in the Audit Memo the report is not sent for complying with the direction issued in the Audit Memo for the year ended 2000-2001 and 2001-2002.

(ii) Except dispensing with agricultural credit no other activity which is required to be carried out as per the bye-laws is not carried out.

(iii) Necessary approval of the competent authority for purchase of the house as required under Section 71 of the Act is not obtained and that the same is also not registered with the Sub-Registrar's office and the amount

is paid in cash.

(iv) No efforts are being made to give the advances to the members of the society and agricultural credit is given only to the members of the Managing Committee only and that the allotment of the profit for the year ending on 31st March 2003 is not done which is required under Section 66(2) of the Act.

The petitioner society filed its reply and also appeared before the authority and had submitted that so far as the directions issued in the Audit Memo for the year 2000-2001 and 2001-2002 is concerned necessary report is sent to the Mehsana District Central Cooperative Bank, it is not necessary that the petitioner must do other activities as per the bye-laws, the society has not purchased the house and therefore there is no question of registration and getting the approval under Section 71 of the Act, and that the house was taken on mortgage and that after some time the mortgage was redeemed in favour of the original-owner, the advancess/credit which is given to the members of the Managing Committee is concerned that is shown after getting necessary sanction from the Mehsana District Central Cooperative Bank and there is no ban in giving credit to the members of the Managing Committee and nothing is on record and/or there is no complaint that some other persons have applied and the loan/credit is not given, the allotment of profit as on 31st March 2002 is already done in the meeting of the General Board for the year 2003-2004.

8.1. The District Registrar, Cooperative Societies, Patan, after considering the submissions made on behalf of the petitioner society and after considering the reply passed an order of superseding the Managing Committee and appointing the Mehsana District Central Cooperative Bank as Administrator by holding that the Society has remained negligent in performance of the duties cast on it by the Act as well as bye-laws which has in turn prejudicially affected the interests of the members of the society. It was also further held that the society has failed to comply with the provisions of Section 85 of the Act as per the provisions of Section 85 of the Act, and ratification is to be made within a period of 3 months and in the present case the audit made for the years 2000-2001 and 2001-2002 was ratified only on 25.7.2004. Thus, it was delayed by 2 years and 3 months. It was also observed that the show cause notice was issued on 26.5.2004 and on the very next day the society rectified the audit report on 27.5.2004. The District Registrar also held that instead of performing all the activities

the society has not put its efforts in furtherance of the aforesaid objects of providing back linkage to the members by way of providing good quality of animal, cattle-feed, grass and necessary medical help to the animals owned by the members. It was also further held that the transaction with regard to 55000 rupees invested by cash was an illegal transaction and the said transaction was on a stamp paper of Rs. 10 only and there was an Audit Memo Para 5 for the year 2003-2004 also for the same. Thus the society has misused its position in improper usage of fund and it was found that for a small society this was a dead investment for a long period. It was contrary to Rule 29 and Section 71 of the Act. It was observed that the advance for the year ending 2002 was Rs. 55,000 and with a view to adjust the accounting entries the society has shown Rs.55,000 towards investment in building and in the balance sheet Rs. 55,000 is shown towards investment, and there is no mention as regards the property being mortgaged in the name of the society by the Board who had not given the advance. It was also observed that the said property belongs to one member of the society who was also the Son of the Chairman of the society. Thus there was a breach of Section 71 of the Act and misuse of power and position. It is also held that in the year 2002-2003 the total amount of advance of RS. 21,100 and the whole amount was given to the committee members only. In the year 2003-2004 the total advance was of Rs. 1,94,900 and it was also given only to Directors and that majority of the funds was advanced only to the Directors. It was also further held that there is a breach of provisions of Sections 66 and 67 of the Act and that there is no rectification of the Audit Para of the Audit Memo. Thus, the society has neglected in performing its duties and that the society has misused its position and ultimately the District Registrar passed an order of superseding the Managing Committee of the society and appointing the Administrator which came to be confirmed by the appellate authority, which is the subject matter of the present Special Civil Application.

9. So far as Special Civil Application No. 7974 of 2004 is concerned, a show cause notice came to be issued upon the petitioner society on 7.6.2004 calling upon the petitioner to show cause why the Managing Committee of the society should not be superseded and the Administrator should not be appointed under Section 81 of the Act alleging inter alia that;

(i) There is no dispensing with the agricultural credit/credit finance.

(ii) The society has accepted fixed deposits at higher rates causing financial loss to the society.

(iii) The society has not initiated any action under Section 106 of the Act for recovery of advances to the tune of Rs. 12,503/= which is outstanding overdues till the year 1998.

(iv) The society could not pay up the bank loan and had to pay towards interest an amount to the tune of Rs. 8,034/=.

(v) There is a breach of Section 71 of the Act.

9.1. The society appeared before the authority and filed its reply. It was contended on behalf of the society that the society is dispensing with credit finance. As per the sanctioned bye-laws the petitioner can accept deposits.

Against the overdue advances to the extent of Rs. 31,848/= efforts are made to recover the amount and only Rs. 12,503/= towards overdue advances are recovered. The society has already paid up the loan much prior to the show cause notice i.e. on 26.5.2003 and 7.6.2004. The District Registrar after considering the reply and the submission made on behalf of the petitioner-society passed an order of superseding the managing committee of the society and appointed the Mehsana District Central Cooperative Bank as the Administrator by holding that the society has remained negligent in performance of duty cast on it by the Act as well as bye-laws which has in turn prejudicially affected the interests of the members of the society, the society has not dispensed with as a credit finance and that the society has accepted the deposits at a higher rate and that the society has not recovered the overdue advances which is due since 1998. That there is a breach of Section 71 of the Act.

9.2. Being aggrieved and dissatisfied with the same, the petitioner society preferred appeal which came to be dismissed which is the subject matter of the present Special Civil Application.

10. So far as Special Civil Application No. 7975 of 2004 is concerned, a show cause notice came to be issued on 3.6.2004 and the petitioner society was directed to show cause why action under Section 81 of the Act should not be initiated and the managing committee of the society should not be superseded and Administrator should

not be appointed alleging inter alia that;

(i) The society has invested Rs. 9,000 in the shares and prior approval as required under Section 71 of the Act is not obtained,

(ii) There is no agricultural credit dispensing by the petitioner society and the society has not tried to disburse the credit to the members of the society for which the society is established.

(iii) No efforts are being made to get the income of interest as there is no agricultural credit dispensing.

(iv) Though for the year 2002-2003 the society has got "D" audit class no efforts are being made to improve the condition and working of the society.

10.1. After considering the submission on behalf of the petitioner society and the reply the District Registrar passed an order of superseding the managing committee of the society and appointed the Mehsana District Central Cooperative Bank as 'Administrator' by holding that the society has remained negligent in performance of the duties cast on it by the Act, there is no agricultural credit dispensing to the members of the society for which the society is established. The society is categorised "D" in the year 2000 to 2003. Though in the earlier 5 years the society was categorised in "C" category the economic status of the society is declining and is not capable of doing its business to carry out the object for which it is constituted, total members of the society is 212, whereas advances are given only to 4 members. The said order came to be challenged by way of appeal before the appellate authority. The appellate authority dismissed the same and confirmed the order passed by the District Registrar which is the subject matter under challenge in the present Special Civil Application.

11. Shri Harin P. Raval, learned advocate appearing on behalf of the petitioners in each petition has mainly submitted that the impugned action is per se malafide and a convenient officer Shri KP Trivedi was got transferred and posted as District Registrar since the earlier District Registrar Shri AB Gadhvi was not very convenient to respondent No.6 Shri Jaynarayan Vyas who had sufferred defeat in December 2002 Assembly General Elections from Sidhpur Constituency against Shri Balwantsinh Rajput who happened to be the director of the erstwhile A.P.M.C., Sidhpur. Shri Raval has also further submitted that only with a view to see that the members of the Managing

Committee of these societies may not participate in the elections of APMC, Sidhpur this harsh step is taken. He has also further submitted that as such there is no gross negligence which warrants action under Section 81 of the said Act which can be resorted to only as a last measure. He has further submitted that if the allegation is that the overdue advances are not recovered by the society and no efforts are being made it was the duty of the District Registrar also to take action for recovery under Section 106(2) of the Act and therefore merely because the society has failed to recover the overdue advances the order under Section 81 of the Act was not warranted. It is also submitted that no sufficient time was given by the District Registrar to represent their case and the order is passed in hurry only with a view to see that the members of the managing committee of the society may not take part in the election of APMC, Sidhpur. It is also submitted on behalf of the petitioners that before passing the order of appointing Administrator of the society, Section 81(6) mandates the Registrar to consult the financing agency to which the society is indebted and in the present cases the financing agency, i.e., the Mehsana District Central Cooperative Bank is not consulted either before issuance of the show cause notice or thereafter before passing final order. There is breach of mandatory provisions of law and therefore the impugned orders are required to be quashed and set aside. It is also further submitted on behalf of the petitioners that the power under Section 81(1)(a) of the Act is to be exercised only on formation of an opinion by the Registrar and the said opinion should be on the basis of the objective facts and as a last resort and only when it is found that the managing committee is persistently making default and/or that it is negligent in the performance of duties imposed on it by Act, Rules or Bye-laws and only when it is found that the negligence is so gross the order with regard to supersession of the committee and Administrator is required to be passed. So far as the aspect of Sections 66 and 68 of the Act is concerned, Shri Raval has submitted on reading Section 66(1) of the Act it is clear that carrying final profit is an act permissible and not restricted and the society cannot be forced to declare dividend or to carry its profit by appropriating it to the reserve fund and therefore the question of Section 67 complying comes into play only where the society decide to appropriate its profit in the manner contemplated under the Act and there is no application of Section 66(2) or Section 67 where the society decides to carry forward its profits. He has also submitted that merely because in some cases audit classification is poor it may not give a ground for

superseding a managing committee. So far as the amendment of bye-law in one of the cases is concerned, it is submitted that it is ultimately for the Assistant District Registrar (Panchayat) who is an officer directly under the control and supervision of the District Registrar to take steps and once the proposal is sent there is no fault on the part of the society and therefore on that ground the order under Section 81 should not be passed. He has further submitted that the orders passed by both the authorities, i.e., the original authority and the appellate authority are cryptic, reflecting non-application of mind and not dealing with the contentions specifically urged and therefore requested to allow all the Special Civil Applications and to quash and set aside the orders with regard to supersession of the Managing Committee and the appointment of Administrator of the societies.

12. Shri Kamal B. Trivedi, learned Additional Advocate General has appeared on behalf of the State Government and has opposed the present Special Civil Applications. He has submitted that the orders passed by both the authorities below are in consonance with Section 81 of the said Act. He has further submitted that the Registrar having satisfied that the Managing Committees of the societies was negligent in performance of their duties which prejudicially affected the interests of the societies; there was non-performance of the duties cast upon them under the Act, Rules and Bye-laws; and in some of the cases the societies have not performed their duties and/or not carried out their activities for which they are constituted and established, i.e., not giving agricultural credit to the members of the society and not taking actions for promoting dispensation of agricultural credit to the members of the society, and that in some cases not taking action for recovery of the amount/advances/credit though the same have become overdue which amounts to non-performance of duties cast upon them, passed the impugned orders. He has further submitted that having further satisfied that the societies have exceeded or abused their powers, they are not competent to perform their duties, deliberately made default in performance of their duties, and that they were negligent in performance of their duties, the orders are passed. He has further submitted that the expression "negligent in performance of the duties",as occurring in Section 81 of the Act as one of the grounds for supersession of the managing committee of the society, is required to be read in ordinary fashion as it appears when sub-planting and/or adding any further words therein so as to content that the said negligence is referable

only to "gross negligence" or "rash negligence" or "great negligence". He has further submitted that there is nothing like 'gross negligence' or 'rash negligence'. 'Negligence' is negligence and therefore he has submitted that the authorities were right in passing the order of supersession having found that the societies were neglient in performance of their duties. He has further submitted that so far as Section 81(6) of the Act is concerned one has to consider the object behind the provision. He has submitted that the financing agency is required to be consulted as the societies are indebted to the said financing agency and therefore if the said financing agency is consulted before superseding the managing committee and appointing the Administrator they can give their views so that their interests can be protected. He has further submitted that, in the present case the financing agency itself, i.e., the Mehsana District Central Cooperative Bank Ltd., to which the societies are indebted, is appointed as an Administrator, prior consultation with the said agency is not warranted in the facts and circumstances of the case and as the Administrator can look after their own funds. So far as Section 66 and 67 of the Act are concerned, he has submitted that Section 66(1) of the Act mandates that net profit shall be available for appropriation by the society and a conjoint reading of Section 66 and Section 67 makes it clear that as provided in Section 67, 'reserve fund' is mandatory for every society not only to maintain the reserve fund but also to appropriate 1/4th of its net profit to the reserve fund every year. He has also further submitted that it is the duty of every society to obey the directions issued in the Audit Memo and try to meet with the same, and non-compliance of the directions issued in the Audit Memo by the Auditor can be considered to be a 'negligence in performance of its duty'.

12.1. Relying upon the judgment of the Division Bench of this Court, reported in 44(1) GLR Page 97, Shri Trivedi has submitted that in the matter of supersession of any elected body, the scope of judicial scrutiny and review under Article 226 of the Constitution is not that of exercise of powers of the Court of appeal but is only restricted to procedural aspects on the point of principles of natural justice or in a case where the order is so perverse that no authority could form such an opinion on the basis of the record available with it. Therefore, he requested to dismiss all the petitions.

13. Heard the learned advocates appearing on behalf of the parties. Section 81 of the Gujarat Cooperative

Societies Act, reads as under:

81. Supersession of Committee.___

(1) If in respect of a committee of a Society having the Registrar as its member, the State Government and in respect of a Committee of a Society which does not have the Registrar as its member, the Registrar, isi of the opinion that the Committee__

(a) persistently makes default or, is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or does anything which is prejudicial to the interest of the society or its members, or

(b) fails to comply with any directions issued under sub-section (1) of section 160, or such directions as modified under sub-section (2) of that section,

then subject to the rules the State Government or, as the case may be the Registrar may, after giving the committee an opportunity of stating its objections, if any, within fifteen days from the date of issuance of notice, by order in writing, remove the Committee; and appoint-

(i) a committee, consisting of one or more members of the society, in its place, or

(ii) one or more administrators who need not be members of the society,

to manage the affairs of the society for a period not exceeding two years as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so, however, that the total period does not

exceed four years in the aggregate.

(2) The committee or administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society, and take all such action as may be required in the interests of the society.

(3) If at any time during any period or extended period [referred to in sub-section (1)], it appears to the Registrar that it is no longer necessary to continue to carry on the affairs of the society as aforesaid, he may, by an order published in the Official Gazete, direct that the management shall terminate; and on such order being made, the management of the society shall be handed over to a new committee duly constituted.

(4) The committee or administrator shall, at the expiry or termination of its or his term of office, arrange, for the constitution of a new committee in accordance with the bye-laws of the society.

(5) All acts done or purported to be done by the committee or administrator during the period which the affairs of the society are carried on by the committee or administrator appointed under sub-section (1), shall be binding on the new committee.

(6) Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult any co-operative financing institution to which it is indebted.

Thus, if the Registrar is of the opinion that the Committee persistently makes default or, is negligent in the performance of the duties imposed on it by this Act

or Rules or Bye-laws or does anything which is prejudicial to the interests of the society or tis members or fails to comply with any directions issued under sub-section (1) of Section 160 or such directions as modified in sub-section (2) of Section 160, then the Registrar, after giving the Committee an opportunity, is competent to remove the Committee and appoint an Administrator to manage the affairs of the society for a period not exceeding two years. Sub-section (6) of Section 81 is with regard to consultation with the Cooperative Financing Institution to which a society indebted.

13.1. As stated hereinabove, all the petitioner societies are 'Agricultural Credit Dispensing Societies', and their main object and purpose is to give credit to the needy agriculturists. So far as Special Civil Applications No. 7974 of 2004 and 7975 of 2004 are concerned, apart from other allegations and the findings, one of the findings is that the aforesaid societies have not tried and have not made any effort to give finance/credit to the agriculturists. Thus, they have neglected in performance of their duties cast upon them, and the purpose for which the society is formed is frustrated and has not achieved its object. The other allegations and findings against some of the petitioner societies as stated above are that there are outstanding dues and no efforts have been by the Committee Members to recover it and therefore there is negligence on the part of the societies in not making efforts to recover the loans. Some of the other findings are that agricultural credit finance is given to the members of the Managing Committee of the societies and so far as other members are concerned, they are not bonafide and are given agricultural credit finance. Other findings are breach of Sections 66 and 67 of the Act, non-compliance of the directions issued by the Auditors in the Audit Memos, and breach of Section 160 of the Gujarat Cooperative Societies Act. On the basis of the aforesaid findings and having been satisfied himself if the District Registrar has come to the conclusion that the societies are required to be superseded and an Administrator is required to be appointed, it cannot be said that there is any illegality and/or the order passed by the District Registrar is so arbitrary which calls for interference of this Court exercising power under Article 227 of the Constitution of India more particularly when the said order is confirmed by the appellate authority.

13.2. Under Rule 34 of the Gujarat Cooperative Societies Rules, duties of the Managing Committee have

been laid down and some of them are as under;

(i) to receive and disburse money;

(ii) to maintain accounts for money received and expended and the accounts of assets and liabilities,

(iii) to watch the recovery of loans and examine the application of loan,

(iv) to examine and take prompt action in cases of all arrears and defaults in repayment of loans and advances. The duties of the Committee are also those are laid down in the Act or Bye-laws of the society.

In light of Rule 34, and the duties cast upon the Managing Committee and the finding of the District Registrar to the effect that prompt efforts and proceedings are not initiated to recover the overdue advances, it can be said that the Managing Committee of the Society has failed to perform its duty which is cast under the Act as well as Rules and Bye-Laws and/or they were negligent in performance of their duties. Thus, if the Managing Committee of a Cooperative Society has not performed its duty to receive and disburse money, to watch the recovery of loan and examine the application forms and examine and take prompt action in cases of default and repayment of loans and advances, then it can be said that the managing committee of their society is negligent in performance of the duties. Thus, on the aforesaid background and findings, if the District Registrar has come to the conclusion that the managing committee of the society was negligent in performance of its duties, and order of supersession of the managing committee of the society is passed, and Administrator is appointed, then it cannot be said that there is illegality is committed by the said authority.

14. So far as argument on behalf of the petitioners that assuming that the petitioners have not taken any action for recovery of the amount/advances which have become overdue then also it was equally the duty of the District Registrar under Section 106 to take steps and even the District Registrar has also not taken the action is concerned, it is the primary duty of the Managing Committee of the society to take prompt action for recovery of the advances and therefore there is no substance in the said argument. So far as the argument on behalf of the society that there is no

gross-negligence which warrants supersession of the Managing Committee is concerned, there nothing like 'gross negligence'. 'Negligence' is negligence. If the words "gross negligence" are to be read in Section 81, then it will be sub-planting the provision and adding the words which are not there in the said Section. In fact, the District Registrar has on the evidence found and held that, the acts of not giving agricultural finance/credit to the members of the societies and/or not making efforts to see that the agricultural credit is dispensed/given to the members of the society and/or not taking any prompt action in recovering the overdue advances can be said to be acts of negligence in performance of their duties for which action under Section 81 of the Act is warranted. Thus, there is no illegality committed by the District Registrar. In some of the cases, the allegations are in respect to grant of agricultural finance/credit to members of the Managing Committee of the Society and/or their directors which can be termed as misuse of position and power for which also it can be said that it is acting prejudicial to the interests of the society. In few cases as stated above, directions issued by the Auditor in his Audit Memo are not complied with. Thus, the ingredients of Section 81 being attracted the authority is justified in passing the order under Section 81 of the Act.

15. So far as the submission on behalf of the petitioners with regard to non-compliance of sub-section (6) of Section 81 is concerned, the learned advocate Shri Raval, had in fact relied upon the following amongst other judgments in support of his submission that provisions of sub-section (6) of Section 81 are mandatory;

1. AIR 1970 S.C. 992;
2. AIR 1979 Orissa 143.

Shri Kamal B. Trivedi, the learned Additional Advocate General has relied upon the judgment in the case of Kartarsingh vs. State of Punjab, reported in AIR 1982 Punjab & Haryana Page 362, and also the judgment of the Hon'ble Supreme Court in the case of Mohansingh vs. International Airport Authority, reported in (1997) 9 S.C.C. Page 132. Though, Shri KB Trivedi, the learned Additional Advocate General representing the State Government has submitted that while passing the order the appellate authority has in fact consulted the financing institution to which the respective Cooperative Societies are indebted, Shri HP Raval, learned advocate for the petitioners has in reply submitted that the cooperative

financing institution is consulted by the appellate authority and not by the District Registrar and that too behind the back of the respective petitioners and therefore it cannot be said to be a compliance of sub-section (6) of Section 81 of the Act. It appears that the main object of consulting the Cooperative Financing Institution to which the society is indebted is that before passing the order of superseding the Committee and appointment of Administrator, the views of the cooperative financing institution are required to be considered, who can suggest the mode and make other suggestions also as ultimately the funds of the very cooperative financing institution are at stake. This provision appears to have been made to safeguard the interests of financing bank, to which a cooperative society, against which action for removal is proposed to be taken, is indebted and the view point of the financing bank in relation to the proposed action is required to be taken into consideration by the Registrar before passing the order under sub-section (1) of Section 81. In the backdrop of the above object, in the present cases, the Administrator,, i.e., the Mehsana District Central Cooperative Bank, who is appointed, is itself a Financing Institution to which the petitioner societies are indebted. In that view of the matter, in the eventuality, namely, when the Cooperative Financing Institution, to which the society is indebted which is likely to be superseded and when an Administrator is to be appointed, itself is appointed as an Administrator, non-compliance of Section 81(6) will not make order of supersession of society as bad and/or illegal, as the very Cooperative Financing Institution will be able to take care of their own funds . Therefore, as per this Court, merely on the ground that the Cooperative Financing Institution, to which the petitioner societies are indebted, is not consulted by the Registrar the impugned order of supersession of the Managing Committee of the society and appointment of Administrator is not vitiated in the facts of the case.

16. In backdrop of the aforesaid allegations, findings and the orders, now whether the judicial review of the aforesaid orders under Article 226/Art. 227 of the Constitution of India is warranted or not is required to be considered. The Division Bench of this Court had an occasion to deal with the need for judicial review over administrative action under Article 226 of the Constitution of India. When an order of supersession of Market Committee was passed in the case of Varvabhai Nathabhai Rabari Vs. State of Gujarat 2003(1) G.L.R. Page 97, the Division Bench of this Court has, while

considering the provisions of Section 46 of the Gujarat Agricultural Produce Markets Act, which is pari materia, held that in the matter of supersession of any elected body, the scope of judicial scrutiny and review under Article 226 of the Constitution is not that of exercising the powers of Court of appeal, but is only restricted to procedural aspects on the point of principles of natural justice or in a case where the order is so perverse that no authority will form such an opinion on the basis of the record available with it.

17. Considering the aforesaid judgment and the finding of the District Registrar as well as the appellate authority, it cannot be said that the orders passed by the District Registrar as well as the appellate authority warrant interference of this Court under Article 226 of the Constitution of India. The findings arrived at being not perverse, it cannot be said that no prudent man would come to such a finding. The scope and judicial review under Article 226 of the Constitution of India, as stated hereinabove, is very limited. Even on the basis of the material available, this Court is also of the opinion that the ingredients of Section 81 of the Act are attracted as the petitioner societies are found to be negligent in performance of their duties by not giving agricultural credit finance or not recovering and/or taking any action with regard to recovery of overdue finances and not complying with the directions issued by the Auditor under Section 160 of the Act and that exercise of power in giving agricultural credit finance to only some of the members who are members of the Managing Committee of the Societies/Directors and that breach of Section 71 of the said Act and Sections 66 and 68 of the Act, and this Court is of the firm opinion that the District Registrar was justified in the facts and circumstances of the case to supersede the Managing Committee of the petitioner society and to appoint Administrator who itself is the Financing Agency to whom the petitioner societies are indebted.

17.1. So far as allegations of malafides are concerned, an affidavit-in-reply is filed by the persons against whom malafides are alleged. However, in the facts and circumstances of the case, when on facts and on evidence it is found that there is a case made out for supersession of Managing Committee of the Society, the allegation of malafides does not carry that much significance, as even on facts the order of supersession and appointment of Administrator is justified.

18. For the reasons stated hereinabove, all the

petitions fail and the same are dismissed. The ad-interim relief granted earlier shall stand vacated. Rule is discharged. However, in the facts and circumstances, there will be no order as to costs.

[M.R. Shah, J.]

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